

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 4.1.1
Eastern Division**

Heathcote Holdings Corp., Inc.

Plaintiff,

v.

Case No.: 1:10-cv-01936

Revlon Inc., et al.

Honorable Matthew F. Kennelly

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, September 1, 2010:

MINUTE entry before Honorable Matthew F. Kennelly: Defendants' motion to stay [8] is denied as moot, because the Federal Circuit has now decided the Stauffer case. Defendants' motion to dismiss [5] is denied. First, based on the Stauffer decision, the plaintiff has standing to sue. Second, defendants' argument that Rule 9(b) requires that intent be pleaded with particularity is lacking in merit; the Rule expressly provides that "intent, knowledge, and other conditions of a person's mind may be alleged generally." In any event, the facts alleged are sufficient to support an inference of the requisite intent to deceive. Third, defendants' argument that the product is marked with both expired and unexpired patents and thus is not an "unpatented article" relies on matters outside the complaint that the Court cannot properly address on a motion to dismiss for failure to state a claim. The Court also notes that defendants' argument that a product marked with both expired and unexpired patents is not "unpatented" is not developed sufficiently for the Court to decide it definitively at this point, particularly because of the possible nuances involved in determining what aspects of the product are covered by which expired or unexpired patents. Defendants are directed to answer the complaint by no later than 9/22/10. The case is set for a status hearing on 10/7/10 for the purpose of setting a pretrial and discovery schedule. Counsel are directed to confer prior to that date to attempt to agree on a schedule to propose to the Court. (mk)

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